

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No. 556 of 1991

with

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CRIMINAL MISC. APPLICATION No. 558 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATHABHAI SAMATBHAI PANCHOLI AHER

Versus

STATE OF GUJARAT

Appearance:

MR JT TRIVEDI for Petitioner
MS VALIKARIMWALA APP for Respondent No. 1
MR DD VYAS for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/11/98

COMMON JUDGEMENT

1. Heard learned advocate Mr. J.T Trivedi for the applicants in each of these applications and learned APP Ms. Valikarimwala for the respondent-State. Mr. U.M Panchal, learned advocate appearing for the rest of the respondents, the original complaints, is not present.

2. All these three applications involve similar facts and identical questions of law. These applications, therefore, are disposed of by this common judgment.

3. These three applications are preferred under Section 482 CrPC by the accused in Inquiry Case No. 38/89, 39/89 and 40/89 respectively pending before the learned Judicial Magistrate, First Class, Mahuva. The said complaints are made by the respondents Nos. 2 & 3 in each of these applications against the applicant and two others for commission of offence punishable under Sections 420, 34, 422, 411, 413, 421 and 414 IPC.

4. It is the claim of the applicants that the respective complainants are the residents of Mahuva and are doing business of commission agent at Mahuva. The complainants sold onion on behalf of the farmers to the buyers who sold them in the markets of other States like Punjab, Haryana & Delhi on credit and the sale price was used to be paid as and when such buyers receive money from their buyers in the other States. The complainants thereafter paid money to the concerned farmers after deducting the amount of their commission. The accused Nathabhai Samatbhai was earlier serving with one such Commission Agent viz., Manharbhai. However, he started his own business in the name of Honest Trading Company and started buying onion from various commission agents on his being recommended by the above referred Manharbhai. Initially he did pay for the onion bought by him. Similarly, he bought certain quantities of onion from the complainants - Commission Agents, during the period from 9th October, 1989 to 25th October, 1989 and assured that the payment thereof would be made after he receives money from the buyers in Delhi and other parts of State of Punjab. However, he did not pay the sale price and informed the concerned commission agents that he had not received money from his buyers, and therefore, he could not pay. After sometime, inquiries were made with the buyers in Delhi and various places in the State of Punjab and it was learnt that no money was due to the accused Nathabhai Samatbhai. Thus, the allegation is that the accused Nathabhai Samatbhai did receive money from his buyers in Delhi and other places in State of

Punjab, however, with a view to cheating his vendors, he avoided to make payment to his vendors commission agents. Upon further inquiry, it was learnt that several such commission agents were cheated and the goods worth lakhs of rupees were not paid for by the accused. Several farmers for whom concerned commission agents had sold the onion had in turn run into a huge loss. The above referred complaints were lodged in the month of November, 1989.

5. Feeling aggrieved, the accused Nathabhai Samatbhai has preferred the present applications under Section 482 CrPC and has contended that it was on account of market crash that the accused could not pay the sale price to his vendors and there was no intention to cheat any one, much less the commission agents or the farmers. It is further contended that the accused Nathabhai Samatbhai was in the business for more than a decade and he had been doing this business every year, even during the relevant season, the accused had paid off as many as 55 of his vendors, however, for want of funds he could not pay only three of his vendors. Thus, there being no intention to cheat any body, the accused cannot have been prosecuted for commission of offence punishable under Section 420 IPC. Mr. Trivedi has contended that on the facts of the present case, the complaints are not maintainable and require to be quashed and set-aside.

6. I am afraid, I am unable to accept the contentions raised by Mr. Trivedi. The facts disclosed in the complaints prima facie do constitute commission of an offence, as alleged. The question of quashing the said complaints, therefore, would not arise. Besides, even the accused Nathabhai Samatbhai has admitted that he has not been able to pay up some of his vendors. In that view of the matter also, the complaints are required to be investigated and proceeded with further.

7. For the reasons recorded hereinabove, I do not find any merit in either of the applications. Applications are, therefore, dismissed. Rule nisi issued in each of the applications is discharged. Interim relief granted is vacated.

Prakash*